

Assembly Bill No. 479

CHAPTER 351

An act to amend Sections 2104 and 15604 of the Probate Code, relating to guardians and conservators.

[Approved by Governor September 26, 2001. Filed with Secretary of State September 27, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 479, Shelley. Guardians: conservators: charitable corporations.

Existing law generally provides that the court has discretion in determining compensation to conservators or guardians of an estate for services rendered; however, if a nonprofit charitable corporation that has been providing care, counseling, or financial advice to the proposed ward or conservatee under the care of a registered social worker is appointed guardian or conservator, the compensation to the corporation, and any fee for an attorney for the corporation, is required to be for services actually rendered and may not be based on the value of the estate. Existing law also permits a nonprofit charitable corporation to be appointed as trustee of a trust under specified conditions, and permits representation of the corporation by counsel, but limits compensation to the corporation, and the fee charged by counsel, to compensation or fee for services actually rendered and prohibits a court from basing the compensation or fee on the value of the estate.

This bill would delete these prohibitions on basing compensation and fees upon the value of the estate.

The people of the State of California do enact as follows:

SECTION 1. Section 2104 of the Probate Code is amended to read:

2104. (a) A nonprofit charitable corporation may be appointed as a guardian or conservator of the person or estate, or both, if all of the following requirements are met:

- (1) The corporation is incorporated in this state.
- (2) The articles of incorporation specifically authorize the corporation to accept appointments as guardian or conservator, as the case may be.
- (3) The corporation has been providing, at the time of appointment, care, counseling, or financial assistance to the proposed ward or conservatee under the supervision of a registered social worker certified by the Board of Behavioral Science Examiners of this state.

(b) The petition for appointment of a nonprofit charitable corporation described in this section as a guardian or conservator shall include in the caption the name of a responsible corporate officer who shall act for the corporation for the purposes of this division. If, for any reason, the officer so named ceases to act as the responsible corporate officer for the purposes of this division, the corporation shall file with the court a notice containing (1) the name of the successor responsible corporate officer and (2) the date the successor becomes the responsible corporate officer.

(c) If a nonprofit charitable corporation described in this section is appointed as a guardian or conservator:

(1) The corporation's compensation as guardian or conservator shall be allowed only for services actually rendered.

(2) Any fee allowed for an attorney for the corporation shall be for services actually rendered.

SEC. 2. Section 15604 of the Probate Code is amended to read:

15604. (a) Notwithstanding any other provision of law, a nonprofit charitable corporation may be appointed as trustee of a trust created pursuant to this division, if all of the following conditions are met:

(1) The corporation is incorporated in this state.

(2) The articles of incorporation specifically authorize the corporation to accept appointments as trustee.

(3) For the three years prior to the filing of a petition under this section, the nonprofit charitable corporation has been exempt from payment of income taxes pursuant to Section 501(c)(3) of the Internal Revenue Code and has served as a private professional conservator in the state.

(4) The settlor or an existing trustee consents to the appointment of the nonprofit corporation as trustee or successor trustee, either in the petition or in a writing signed either before or after the petition is filed.

(5) The court determines the trust to be in the best interest of the settlor.

(6) The court determines that the appointment of the nonprofit corporation as trustee is in the best interest of the settlor and the trust estate.

(b) A petition for appointment of a nonprofit corporation as trustee under this section may be filed by any of the following:

(1) The settlor or the spouse of the settlor.

(2) The nonprofit charitable corporation.

(3) An existing trustee.

(c) The petition shall include in the caption the name of a responsible corporate officer who shall act for the corporation for purposes of this section. If, for any reason, the officer so named ceases to act as the responsible corporate officer for purposes of this section, the corporation



shall file with the court a notice containing (1) the name of the successor responsible corporate officer and (2) the date the successor becomes the responsible corporate officer.

(d) The petition shall request that a trustee be appointed for the estate, shall specify the name, address, and telephone number of the proposed trustee and the name, address, and telephone number of the settlor or proposed settlor, and state the reasons why the appointment of the trustee is necessary.

(e) The petition shall set forth, so far as the information is known to the petitioner, the names and addresses of all persons entitled to notice of a conservatorship petition, as specified in subdivision (b) of Section 1821.

(f) Notice of the hearing on the petition shall be given in the same manner as provided in Sections 1822 and 1824.

(g) The trustee appointed by the court pursuant to this section shall do all of the following:

(1) File the required bond for the benefit of the trust estate in the same manner provided for conservators of the estate as set forth in Section 2320. This bond may not be waived, but the court may, in its discretion, permit the filing of a bond in an amount less than would otherwise be required under Section 2320.

(2) Comply with the requirements for registration and filing of annual statements pursuant to Article 4 (commencing with Section 2340) of Chapter 4 of Part 4 of Division 4.

(3) File with the court inventories and appraisals of the trust estate and present its accounts of the trust estate in the manner provided for conservators of the estate set forth in Chapter 7 (commencing with Section 2600) of Part 4 of Division 4.

(4) Be reimbursed for expenses and compensated as trustee in the manner provided for conservators of the estate as described in Chapter 8 (commencing with Section 2640) of Part 4 of Division 4. However, compensation as trustee appointed under this section shall be allowed only for services actually rendered.

(5) Be represented by counsel in all proceedings before the court. Any fee allowed for an attorney for the nonprofit charitable corporation shall be for services actually rendered.

(h) The trustee appointed by the court under this section may be removed by the court, or may resign in accordance with Chapter 9 (commencing with Section 2650) of Part 4 of Division 4. If the nonprofit charitable corporation resigns or is removed by the court, the settlor may appoint another person as successor trustee, or another nonprofit charitable corporation as trustee under this section.



(i) The trustee appointed by the court under this section is bound by the trust instrument created by the settlor, and shall be subject to the duties and responsibilities of a trustee as provided in this code.

